

ADVERSARY PROCEEDING COVER SHEET ADVERSARY PROCEEDING NUMBER

PLAINTIFFS

David M. Nickless, Trustee

DEFENDANTS

Guy M. Babineau, individually and as Executor of the Estate of Lucille Babineau; Theresa Babineau; Steven McIntosh; Tina Babineau a/k/a Tina Jodrie; and TD BankNorth, N.A.

ATTORNEY (Firm Name, Address, and Telephone No.)

Brian R. Goodwin, Esq.
Nickless and Phillips, PC
625 Main Street
Fitchburg, MA 01420

ATTORNEY (Firm Name, Address, and Telephone No.)

PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor ☐ Other
x Trustee

PARTY (Check One Box Only)

☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin
☐ Creditor **x Other**
☐ Trustee

CAUSE OF ACTION: (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

This is an action seeking marshalling, contribution, and indemnification from joint judgment debtors

NATURE OF SUIT

(Number of up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property

- ☐ 11- Recovery of money/property - § 542 turnover of property
☐ 12- Recovery of money/property - § 547 preference
☐ 13- Recovery of money/property - § 548 fraudulent transfer
☐ 14- Recovery of money/property – other

FRBP 7001(2) – Validity, Priority or Extent of Lien

- ☐ 21 – Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale Property

- ☐ 31 – Approval of sale of property of estate and of a co-owner - § 363(h)

FRBP 7001(4) – Objection/Revocation of Discharge

- ☐ 41 – Objection/ revocation of discharge § 727 (c),(d),(e)

FRBP 7001 (5) Revocation of Confirmation

- ☐ 51 – Revocation of Confirmation

RFBP 7001(6) – Dischargeability

- ☐ 66 - Dischargeability - § 523(a)(1), (14), (14a) priority tax claims
☐ 62 – Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud
☐ 67 – Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny
(continued next column)

FRBP 7001(6) – Dischargeability (continued)

- ☐ 61 – Dischargeability - § 523(a)(5), domestic support
☐ 68 - Dischargeability - § 523(a)(6), willful and malicious injury
☐ 63- Dischargeability - § 523(a)(8), student loan
☐ 64 - Dischargeability - § 523(a)(15), divorce of separation obligation (other than domestic support)
☐ 65 – Dischargeability - other

FRBP 7001 (7) – Injunctive Relief

- ☐ 71 – Injunctive relief – imposition of stay
☐ 72 – Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest

- ☐ 81 – Subordination of claim or interest

FRBP 7001 (9) Declaratory Judgment

- ☐ 91 – Declaratory Judgment

FRBP 7001(10) Determination of Removed Action

- ☐ 01 – Determination of removed claim or cause

Other

☐ SS-SIPA Case – 15 U.S.C. §§ 78aaa *et. seq.*
x 02 – Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law

☐ Check if this is asserted to be a class action under FRCP 23

☐ Check if a jury trial is demanded in complaint

Demand \$

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Wayne G. Lord Charlene M. Lord		BANKRUPTCY CASE NUMBER 06-42451-HJB
DISTRICT IN WHICH CASE IS PENDING Massachusetts	DIVISIONAL OFFICE Western Division	NAME OF JUDGE Henry J. Boroff
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <u>/s/ Brian R. Goodwin, Esq.</u>		
DATE: 03/20/2008	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Brian R. Goodwin, Esq.	

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

In re
Wayne G. Lord
Charlene M. Lord
Debtor(s)

Chapter 7
No. 06-42451-HJB

David M. Nickless, Trustee,
Plaintiff

v.

Adv. Pro.
No. 08-

Guy M. Babineau, individually and as
Executor of the Estate of Lucille Babineau;
Theresa Babineau; Steven McIntosh; Tina
Babineau a/k/a Tina Jodrie; and TD
BankNorth, N.A.,
Defendants

COMPLAINT

I. Jurisdiction & Parties

This matter is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. Sec. 1334. Venue is proper in this Court pursuant to 28 U.S.C Sec. 1409(a).

1. Wayne G. Lord and Charlene M. Lord (hereinafter referred to collectively as “the Debtors”) filed a petition for relief under Chapter 13 of the Bankruptcy Code on August 16, 2005. The case was converted to one under Chapter 7 on July 9, 2007.

2. David M. Nickless is the duly appointed Chapter 7 successor Trustee (hereinafter “the Trustee”).

3. The Defendants, Guy Babineau and Theresa Babineau (hereinafter referred to collectively as “the Babineaus”), are individuals residing at 5 Barton Street, Salem, Essex County, Massachusetts 01970 (hereinafter “the Salem Property”).

4. The Defendant, Steven McIntosh is an individual with a last known address of 167 Main Street, Peabody, Essex County, Massachusetts 01960.

5. The Defendant, Tina Babineau a/k/a Tina Jodrie, (hereinafter, "Tina Babineau") is an individual residing at 40 Derby Street, Salem, Essex County, Massachusetts 01970.

6. The Defendant, TD BankNorth, N.A., f/k/a Banknorth, N.A. (hereinafter "BankNorth") is a banking and financial services company headquartered in Portland, Maine, doing business in the Commonwealth of Massachusetts.

II. Introduction

7. This is an action seeking marshalling, contribution, and indemnification from joint judgment debtors.

8. On or about November 27, 1995, Warren Five Cents Savings Bank, the predecessor-in-interest to BankNorth recovered a judgment in the amount of \$71,889.23 against the Debtors; the Babineaus; Steven McIntosh; Tina Babineau; and another.¹ A true and accurate copy of the Order and Judgment, Essex Superior Court Civil Action No. 95-1552, is attached hereto as Exhibit A and shall be referred to as the BankNorth Judgment. By way of its proof-of-claim, BankNorth alleges the judgment has accumulated to over \$183,000.

9. Two funds exist from which BankNorth may satisfy its judgment. These funds consist of assets of the bankruptcy estate and assets outside of the bankruptcy estate. The Trustee seeks relief that includes an order that would require BankNorth to satisfy its judgment from assets outside of the bankruptcy estate

III. Statement of Facts

10. The assets of the Debtors' bankruptcy estate include a 1/4 beneficial interest in real estate located at 405 Richibuctou Village, New Brunswick, Canada (hereinafter the New Brunswick Property) and a 1/4 interest as tenants in common in Apartment Number 207 in Seminole Garden Apartments No. 15-D in Seminole, Florida (hereinafter the Seminole Property). A true and accurate copy of Schedule A of the Debtors' Bankruptcy Petition is attached hereto as Exhibit B.

11. Pursuant to the BankNorth Judgment, all of the Defendants were "enjoined from selling, leasing, conveying, mortgaging or encumbering any and all real estate to which they have an interest, legal or beneficial, located in the Commonwealth of Massachusetts or in Canada until such time as the Judgment and Execution issued by this Court are satisfied in full."

12. On or about August 14, 2003, Henri Babineau, as Trustee of Five Barton Street Salem Realty Trust, transferred the Salem Property to the Babineaus for \$100,422.33. A true and accurate copy of the Quitclaim Deed referencing this transaction and recorded with the Essex South District Registry of Deeds at Book 21710, Page 101, is attached hereto as Exhibit C.

¹ Henri Babineau as Trustee of The Babineau Family Trust. Upon information and belief, Henry Babineau is deceased.

13. On August 29, 1996, Warren Five Cents Savings Bank attached the Salem Property in the amount of \$80,000.00. A true and accurate copy of the Writ of Attachment recorded with the Essex South District Registry of Deeds at Book 13730, Page 462, is attached hereto as Exhibit D.

14. On or about October 17, 2006, the Babineaus entered into a Stipulation with BankNorth pursuant to which the Babineaus agreed to restrain from transferring or encumbering any interest in the Salem Property. A true and accurate copy of the Stipulation Agreement is attached hereto as Exhibit E.

IV. Causes of Action

COUNT I MARSHALLING

15. The Trustee restates and re-alleges paragraphs 1 – 14 as though fully stated herein.

16. The Trustee has the status of a junior lienholder and/or a hypothetical judicial lien creditor under Section 544 of the U.S. Bankruptcy Code.

17. BankNorth is a judgment lien holder and a secured creditor.

18. Property of the Debtors' bankruptcy estate may be used to satisfy debts held by BankNorth and the Debtors' creditors, and therefore, the Debtors' estate is a common debtor for marshalling purposes.

19. The Trustee, in the administration of the Debtors' bankruptcy estate, is limited in satisfying the claims of the creditors to the property of the bankruptcy estate, whereas BankNorth may look to a pool of assets from the BankNorth Defendants, including, but not limited to, the Salem Property.

20. The Trustee will be prejudiced in the administration of the Debtors bankruptcy estate if BankNorth enforces its asserted interests solely against the property of the bankruptcy estate, including but not limited to, the New Brunswick Property and the Seminole Property, rather than looking to the entirety of the pool of assets of the BankNorth Defendants; whereas BankNorth will not be prejudiced by being required to pursue its judgment upon the Salem Property, and / or other property of the non-debtor BankNorth Defendants.

WHEREFORE, the Trustee respectfully requests:

1. Judgment be entered for the Trustee on Count I;
2. That BankNorth and the non-debtor BankNorth Defendants appear and present their claims, including but not limited to their interest in the Salem Property.
3. That BankNorth be ordered to exhaust its security interest in assets outside of the bankruptcy estate before seeking to satisfy its judgment from assets of the bankruptcy estate.

4. That the rights of the Defendants be determined by this Court.
5. For such other and further relief as this Court deems just and proper.

COUNT II
CONTRIBUTION

21. The Trustee restates and re-alleges paragraphs 1 – 20 as though fully stated herein.
22. BankNorth has filed a proof of claim against the Debtors for the claim set forth in the BankNorth Judgment.
23. In the event that BankNorth recovers against the Debtors on the BankNorth Judgment, the non-debtor BankNorth Defendants are liable to contribute to the amount so found due.

WHEREFORE, the Trustee respectfully requests:

1. Judgment be entered for the Trustee on Count II;
2. For such other and further relief as this Court deems just and proper.

COUNT III
INDEMNIFICATION

24. The Trustee restates and re-alleges paragraphs 1-23 as though fully stated herein.
25. The Debtors' bankruptcy estate is entitled to indemnification from the non-debtor BankNorth Defendants.

WHEREFORE, the Trustee respectfully requests:

1. Judgment be entered for the Trustee on Count III;
2. For such other and further relief as this Court deems just and proper.

/s/ Brian R. Goodwin
David M. Nickless, Trustee, BBO No. 371920
Brian R. Goodwin, Esq., BBO No. 657251
Nickless and Phillips, PC
625 Main Street
Fitchburg, MA 01420
978-342-4590
bgoodwin.nandp@verizon.net

EXHIBIT A

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 95-1552

WARREN FIVE CENTS SAVINGS BANK,
Plaintiff

v.

HENRY BABINEAU, TRUSTEE OF
BABINEAU FAMILY TRUST,
HENRY BABINEAU,
LUCILLE BABINEAU,
STEVEN McINTOSH,
CHARLENE LORD,
TINA BABINEAU a/k/a TINA McINTOSH,
and WAYNE G. LORD,
Defendants

ORDER + Judgment

Notice being provided to all parties, and after a hearing in which all parties were present, it is hereby ORDERED and ADJUDGED that Judgment enter on behalf of plaintiff, Warren Five Cents Savings Bank and against the defendants, Henry Babineau, Trustee of Babineau Family Trust, Henry Babineau, Lucille Babineau, Steven McIntosh, Charlene Lord, Tina Babineau a/k/a Tina McIntosh and Wayne G. Lord in the amount of \$71,889.23, together with costs.

By the Court,

Entered: Nov. 27, 1995

[Signature]
BORENSTEIN

, J.

11/28/95
D.J.G.
W.B.L.
H.B.
L.B.
S.M.
C.L.
T. Bork T.M.

16

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT
CIVIL ACTION NO. 95-1552 **A**

WARREN FIVE CENTS SAVINGS BANK,
Plaintiff

v.

HENRY BABINEAU, TRUSTEE OF
BABINEAU FAMILY TRUST,
HENRY BABINEAU,
LUCILLE BABINEAU,
STEVEN MCINTOSH,
CHARLENE LORD,
TINA BABINEAU a/k/a TINA MCINTOSH,
and WAYNE G. LORD,
Defendants

ORDER + judgment

Notice being provided to all parties, and after a hearing in which all parties were able to be heard, it is hereby ORDERED and ADJUDGED that the defendants, Henry Babineau, Trustee of Babineau Family Trust, Henry Babineau, Lucille Babineau, Steven McIntosh, Charlene Lord, Tina Babineau a/k/a Tina McIntosh and Wayne G. Lord and their agents, servants, employees, attorneys and those persons in active concert or participation with them who receive notice of this Order, are hereby enjoined from selling, leasing, conveying, mortgaging or encumbering any and all real estate to which they have an interest, legal or beneficial, located in the Commonwealth of Massachusetts or in Canada until such time as the Judgment and Execution issued by this Court are satisfied in full.

11/28/95
D.J.G.
W.G.L.
H.B.
L.B.
S.M.
C.L.
T. Baka T.M.

By the Court,

Entered: Nov. 27, 1995

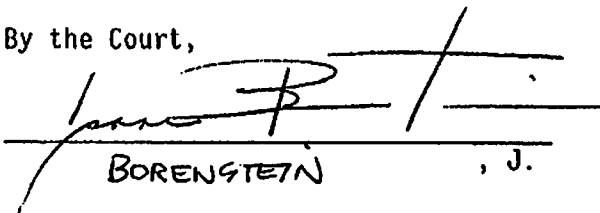

BORENSTEIN, J.

EXHIBIT B

Form B/A
(11/05)In re **Wayne G Lord,
Charlene M Lord**Case No. **06-42451**

Debtors

SCHEDULE A. REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Single Family Home Location: 245 Lowell Street, Methuen MA	Tenants by Entirety	J	300,000.00	161,491.00
Single Family Home 405 Richibuctou Village New Brunswick, Canada	1/4 Beneficial interest in trust	W	0.00	0.00
1 Bedroom Condo Seminole, FL	1/4 interest as tenant in common	W	0.00	0.00

Sub-Total > **300,000.00** (Total of this page)Total > **300,000.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

EXHIBIT C

2003090800692 Bk:21710 Pg:101
09/08/2003 15:04:00 DEED Pg 1/2

QUITCLAIM DEED

Henry Babineau, Trustee of Five Barton Street Salem Realty Trust under Declaration of Trust dated May 29, 1987, and recorded with Essex South District Registry of Deeds at Book 8991, Page 410, of Richibouctou, New Brunswick, Canada, for One Hundred Thousand Four Hundred Twenty-Two and $\frac{23}{100}$ Dollars (\$100,422.33)

consideration paid, grants to **Guy M. Babineau and Teresa M. Babineau**, husband and wife as tenants by the entirety, of 5 Barton Street, Salem, Massachusetts, with **QUITCLAIM COVENANTS**,

The land in said Salem, together with the buildings thereon, situated on 5 Barton Street, bounded and described as follows:

SOUTHWESTERLY by Barton Street, fifty-two and twenty-three hundredths (52.23) feet, be the same more or less;

NORTHWESTERLY by lands now or formerly of Ward Estate, Dearborn, Very Estate and Edgerly, one hundred sixty-nine (169) feet, be the same more or less;

NORTHEASTERLY by lands now or formerly of Schollar and Fernanrd, fifty-five and eighteen hundredths (55.18) feet, be the same more or less; and

SOUTHWESTERLY by land now or formerly of Harrington previously McNulty one hundred fifty-two and forty hundredths (152.40) feet to the point of beginning.

Containing by estimation 8,423 square feet.

For my title see deed of Albert J. Belisle and Alicia-Fe A. Belisle, dated May 29, 1987, and recorded with Essex South District Registry of Deeds at Book 8991, Page 419.


Return to:
Guy M. Babineau and Teresa M. Babineau
5 Barton Street
Salem, Massachusetts 01970

CANCELLED
ESSEX COUNTY
REGISTERED
03/20/08 08:57:32
2003090800692

HB

2003090800692 Bk:21710 Pg:102
09/08/2003 15:04:00 DEED Pg 2/2

WITNESS my hand and seal this 14th day of August, 2003.


Henry Babineau, Trustee of Five Barton Street
Salem Realty Trust as aforesaid

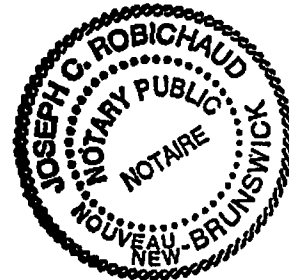
STATE OF Province of New Brunswick

Kent, ss. August 14, 2003

Then personally appeared the above-named Henry Babineau, Trustee of Five Barton Street Salem Realty Trust and acknowledged the foregoing instrument as his free act and deed as aforesaid Trustee, before me,


Notary Public
~~My commission expires:~~

Address of Premises: 5 Barton Street, Salem, Massachusetts



Return to:
Guy M. Babineau and Teresa M. Babineau
5 Barton Street
Salem, Massachusetts 01970

EXHIBIT D

BK 13730 PG 462

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 96-1726

Warren Five Cents Savings Bank Plaintiff(s)

v.

Henry Babinem + Lucille Babinem Defendant(s)

SPECIAL

WRIT OF ATTACHMENT - The Right Title and Interest
of the Defendants in any Beneficial Interest in Five Barton Street Realty Trust
...To the sherriffs of our several counties or their deputies:We command you to attach the goods or estate of defendants Henry Babinem + Lucille Babinem
and Henry Babinem + Lucille Babinem, standing in the name of Henry Babinem
of to the value of \$ 80,000 (the amount authorized), asprayed for by plaintiff Warren Five Cents Savings Bank, of Falmouth, Massachusetts, whose
attorney is David J. Gallagher of Ryant, Stevens, of 441 Edgewater Place, Wakefield, in an action
brought by said plaintiff against said defendant
in the Superior Court for Essex County, and make due return of this writ with your
doings thereon.The complaint in this case was filed on 8-20, 1996. This attachment was approved
on 8-27-1996, by Grasso, J., in the
amount of \$ 80,000

A Trustee of The FIVE BARTON STREET SALEM REALTY TRUST

Robert J. Mulligan

Witness, John J. Mulligan, Jr., Esquire, at Salem, the

27 day of AUGUST in the year of
our Lord one thousand nine hundred and NINETY-SIXKevin Jones
Clerk

NOTE:

1. This writ of attachment is issued pursuant to Rule 4.1 of the Massachusetts Rules of Civil Procedure.

A TRUE COPY ATTEST:

Deputy Sheriff

Document Page 17 of 20
 Commonwealth of Massachusetts BK 13730 PG 463

Essex, SS

Salem, August 29th

A.D. 19 96

8:35 A.M.

By virtue of this writ, I this day attached all the right, title and interest which the within named defendant

Henry Babineau & Lucille Babineau

has in and to any and all real estate within the Southern District of Essex; and, I also at the same time specifically attach all the right, title and interest which the above named have in on to the following described real estate:

The land in said Salem, together with the buildings thereon, situated on S Barton Street, bounded and described as follows:

SOUTHWESTERLY by Barton Street, fifty-two and twenty-three hundredths (52.23) feet, be the same more or less;

NORTHWESTERLY by lands now or formerly of Ward Estate, Dearborn, Very Estate and Edgerly, one hundred sixty-nine (169) feet, be the same more or less;

NORTHEASTERLY by lands now or formerly of Schollar and of Fernard, fifty-five and eighteen hundredths (55.18) feet, be the same more or less; and

SOUTHWESTERLY by land now or formerly of Harrington previously McNulty, one hundred fifty-two and forty hundredths (152.40) feet to the point of beginning.

Containing by estimation 8,833 square feet.

Being the same premises conveyed to the Grantors herein by Deed of Albert J. Bellisle dated July 14, 1986 and recorded with the Essex South District Registry of Deeds in Book 8392, Page 227.

S Barton Street, Salem, Massachusetts 01970

The record title to the above described real estate stands with name of

Henry Babineau, Trustee of Five Barton Street Salem Realty Trust


Deputy Sheriff

A true copy of so much of my return as relates to said attachment.

Attest:


Deputy Sheriff

EXHIBIT E

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION NO. 6-1855B

TD BANKNORTH, N.A., f/k/a
BANKNORTH, N.A., SUCCESSOR BY
MERGER TO WARREN FIVE CENTS
SAVINGS BANK,

Plaintiff

STIPULATION

v.

GUY M. BABINEAU and
TERESA M. BABINEAU,
Defendants

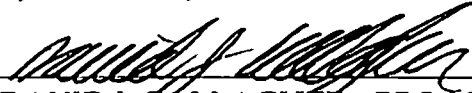
NOW COME the plaintiff, TD Banknorth, N.A., f/k/a Banknorth, N.A., successor by merger to Warren Five Cents Savings Bank, and the defendants, Guy M. Babineau and Teresa M. Babineau, and stipulate that said defendants will not sell, lease, convey, mortgage, encumber or transfer any legal, equitable or beneficial interest they hold in any real estate in the Commonwealth of Massachusetts, including but not limited to property located at 5 Barton Street in Salem, Massachusetts, until further order of this Court.

The parties stipulate that the Court may enter this Stipulation as an order of the Court.

TD BANKNORTH, N.A., f/k/a BANKNORTH, N.A.,
SUCCESSOR BY MERGER TO WARREN FIVE
CENTS SAVINGS BANK,

By its attorney,


Date: 10/23/06



DAVID J. GALLAGHER - BBO NO. 183120
REGNANTE, STERIO & OSBORNE LLP
401 Edgewater Place, Suite 630
Wakefield, MA 01880-6210
(781) 246-2525

GUY M. BABINEAU and
TERESA M. BABINEAU,
By their attorney,

Date: 10/17/06



ROBERT A. MUNROE - BBO NO. 361290
81 Washington Street
Salem, MA 01970
(978) 745-7575